

IN THE IOWA DISTRICT COURT IN AND FOR DES MOINES COUNTY

ROBERTA STEFFENSMEIER)
)
 Petitioner,)
)
 vs.)
)
 PUBLIC EMPLOYMENT)
 RELATIONS BOARD,)
)
 Respondent,)
)
 and AFSCME IOWA COUNCIL 61)
)
 Interested Party.)

Case. No. CVEQ006723

RULING ON PETITION
 FOR JUDICIAL REVIEW

2006 AUG 17 AM 9:55
 DISTRICT COURT
 DES MOINES, IOWA

This matter is before the Court on Petitioner Roberta Steffensmeier's "Petition for Judicial Review," filed December 30, 2005. Petitioner Roberta Steffensmeier (hereinafter "Petitioner") filed her supporting Brief on April 21, 2006. Interested Party AFSCME Iowa Council 61 (hereinafter "Union") filed its "Intervenor's Brief" on May 17, 2006. Respondent Public Employment Relations Board (hereinafter "Board") filed its "Brief and Argument" on May 18, 2006. Petitioner filed her "Reply Brief" on May 31, 2006. The Board provided the Court with the agency record in the case at bar on February 6, 2006, in accordance with Iowa Code § 17A.19(6). Pursuant to a prior scheduling order, the matter came on for hearing on June 12, 2006. Attorney Philip B. Mears appeared personally for the Petitioner. Attorney Jan V. Berry appeared telephonically on behalf of the Board, and attorney Mark T. Hedberg appeared telephonically on behalf of the Union. The matter was deemed submitted on June 12, 2006. The Court having reviewed the record, including the aforementioned documents, and considered

argument of counsel enters the following ruling.

COURSE OF PROCEEDINGS

On April 10, 2003, Petitioner filed a Prohibited Practice Complaint before the Board, pursuant to Iowa Code § 20.11. The Complaint alleged the Union breached its duty of fair representation. A hearing was held before an Administrative Law Judge (hereinafter "ALJ") of the Board on March 4-5, 2006. The ALJ issued his Proposed Decision and Order on June 23, 2004, concluding that the Union had not committed a prohibited practice in its handling of a grievance filed by Petitioner, including its decision not to pursue the grievance to arbitration.

Next, Petitioner timely filed her Notice of Appeal to the Board on July 13, 2004. The Petitioner specifically appealed the ALJ's conclusion, arguing that the Union's decision not to arbitrate Petitioner's termination was without reason or done in bad faith. On December 1, 2005, the Board adopted the ALJ's findings of fact and concluded as a matter of law Petitioner failed to establish that the Union violated its duty of fair representation in its handling of her grievance and ordered Petitioner's Prohibited Practice Complaint be dismissed. The Petitioner then filed her Petition for Judicial Review.

BACKGROUND FACTS

Petitioner was a bus driver employed by the City of Burlington (hereinafter "City"). Two witnesses had complained to the City that on June 24, 2002, Petitioner had driven her bus through an activated railroad crossing. After the City's investigation, the City decided to terminate Petitioner's employment. At that time, a collective bargaining agreement was in existence between the City of Burlington, as employer, and the Union, as union representatives for the City's employees.

On July 29, 2002, Petitioner was called to a meeting with City representative Larry Gantz, along with Petitioner's local union steward Jim Capps. Gantz presented Petitioner with a Disciplinary Action Report containing the allegations of Petitioner's driving misconduct, along with other past disciplinary actions against Petitioner. Petitioner argued that she had not driven through the crossing and had instead turned around and went another way upon seeing the railroad crossing's alarms. Petitioner became upset and declared that people were setting her up and were out to ruin her. Ultimately, the City found its witnesses to be more credible than Petitioner and concluded that Petitioner had in fact driven around and through an activated railroad crossing signal arms and lights, in violation of work rules, Commercial Driver's License Regulations, and the Iowa Code. This finding, coupled with Petitioner's past disciplinary actions, led City to terminate Petitioner's employment.

The collective bargaining agreement in existence contained grievance and arbitration procedures for discharged employees to challenge their terminations. After the termination meeting, Capps and Petitioner met to prepare Petitioner's grievance. The record shows that Capps told Petitioner to gather witness statements that established Petitioner did not drive through the crossing. Petitioner began collecting witness statements in support of her position. Concurrently, the Union filed a grievance on behalf of Petitioner for termination without just cause. The grievance was received by the City, constituting step one of the grievance procedures. The City subsequently denied the grievance.

After the initial denial of her grievance, Petitioner spoke with local union president Sherri Riney regarding questions Petitioner had. Upon Petitioner's inquiry, Riney advised Petitioner she could apply for unemployment benefits, as it had no bearing on the grievance's outcome.

Petitioner stated to Riney that it had been another bus that had driven through the crossing, not the bus she was driving. Additionally, when told by the Riney that the grievance process took time, Petitioner became agitated and threatened to sue various people.

Thereafter, Petitioner's grievance was appealed to step two of the collective bargaining agreement's grievance procedures. The step two responder subsequently denied the grievance. The responder stated that he could not believe that two different people would fabricate such a serious allegation. The Union then filed an appeal of Petitioner's grievance, taking it to the third step of the grievance procedure.

At the same time, Petitioner began the process of applying for unemployment benefits and was awarded unemployment compensation. The employer subsequently appealed Petitioner's benefit award, arguing Petitioner was not entitled to the benefits.

Petitioner later met with local union representatives Capps, Riney, and Union Field Representative Otto Groenwald to discuss the step three meeting for her grievance. The Union representatives gave Petitioner advice on how to conduct her testimony during the meeting, such as to limit her answers to questions to "yes" or "no" and to avoid volunteering information that was not asked. When Petitioner indicated she could testify that there was a 30-second lag from the time the lights began to flash and the crossing arms descended (thus implying she could've made it through the intersection had she driven through it), the Union advised her not to mention it. Petitioner also stated that the City could give her a polygraph exam, to which the Union responded that the exams were unreliable, irrelevant, and inadmissible. Petitioner then showed the Union representative the witness statements she gathered. The Union representatives became concerned when they noticed that several statements were in the same handwriting. Petitioner

explained that one of the witnesses, David Lint, had assisted a few of the other witnesses with their statements because these witnesses were unable to write or mentally retarded. David Lint wrote in his statement he remembered Petitioner's bus picking him up the day of the incident on the alternate route, which Petitioner took when the railway crossing was activated, because he was on his way to the local community college where he was a student. The Union later determined that Lint was not a student at the community college.

At the step three meeting, the City presented its witnesses' statements, whose names were redacted, along with the various rules and regulations it alleged Petitioner violated. The Union presented Petitioner's witnesses' statements and gave Petitioner's explanation of the handwriting similarities, but the City argued the statements were fabricated and should not be accepted. Against the advice of the Union representatives, Petitioner testified about the absence of a police report or a railway near miss report. She also mentioned how much time was allowed to clear the tracks after the lights began flashing. Upon her review of the City's witnesses' statements, Petitioner became upset. Petitioner declared that the statements were lies and that she knew who had written them, naming two persons who were not the authors of the statements. When told she was incorrect, Petitioner loudly called the City representative a liar and Riney had to ask Petitioner to calm down. The step three responder accepted all of the statements submitted, but ultimately denied Petitioner's grievance.

After the step three grievance was denied, the Union representatives Capps, Riney, and Groenwald met to discuss Petitioner's grievance. The fourth step in the process was arbitration, and the Union representatives did not believe the grievance had a reasonable expectation of being won. The Union representatives identified nine areas that they felt caused the arbitration

to be unwinnable: (1) The two witnesses against Petitioner were deemed credible; (2) Petitioner's witnesses would be difficult to establish as reliable or credible on the witness stand and there would be no way to prove they were on Petitioner's bus at the time of the alleged incident; (3) Some of the witness statements were in the same handwriting and there were others with date/time changes and yet others that didn't address the events at issue; (4) Petitioner would be a bad witness due to display of temper and getting off track; (5) Petitioner had had five disciplines in five years plus other complaints and counseling sessions the City had with her; (6) The alleged offense was of a very serious nature; (7) Petitioner changed her story over time; (8) the City had a legitimate reason for the delay between the alleged offense and the imposition of discipline; and (9) the union would be unlikely to prevail at arbitration. Based upon these justifications, the Union decided not to pursue the grievance to arbitration and informed Petitioner of her right to appeal their decision internally to the Union.

Petitioner then appealed the Union's decision not to arbitrate her grievance and a hearing was held. Petitioner argued before the Union appeal panel that since she had prevailed on her unemployment compensation claim in a different proceeding, this should persuade the panel to arbitrate her termination grievance. She argued the underlying question in both proceedings was whether Petitioner actually drove through the activated railway crossing. The Union repeatedly indicated that the standards of just cause for discipline and gross misconduct were not the same and that the Union would not consider the unemployment compensation ruling because it was believed to be inadmissible before a grievance arbitrator. Petitioner maintained that she did not drive through the activated crossing and that the City's witnesses' statements were untrue. She advised she would take a polygraph and presented further witness statements. The Union denied

her appeal and identified four reasons for recommending Petitioner's grievance not be arbitrated: (1) Petitioner's poor disciplinary record; (2) numerous previous complaints; (3) the credibility of the employee who wrote the eyewitness account; and (4) a local union representative's memo of November 21, 2002 (not in evidence).

Meanwhile, in Petitioner's unemployment proceedings, a different ALJ affirmed the earlier decision awarding unemployment compensation benefits to Petitioner, finding Petitioner was discharged for no dischargeable reason. Likewise, the Employment Appeal Board affirmed the decision of the ALJ regarding Petitioner's entitlement to unemployment compensation.

Thereafter, Petitioner filed her prohibited practice complaint before the Board, alleging the Union breached its duty of fair representation to Petitioner.

STANDARD OF REVIEW

The Iowa Administrative Procedure Act, Iowa Code chapter 17A, governs judicial review of the Board's final decisions. *See* Iowa Code § 20.11(5) (2005). "In exercising its judicial review power, the district court acts in an appellate capacity." *Clark v. Vicorp Restaurants, Inc.*, 696 N.W.2d 596, 603 (Iowa 2005). Under the Act, the Court "may only interfere with the agency's decision if it is erroneous under one of the grounds enumerated in the statute, and a party's substantial rights have been prejudiced." *Grant v. Iowa Dept. of Human Servs.*, No. 04-1114, slip op. at 2 (Iowa July 14, 2006) (citing *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006)). Iowa Code § 17A.19(10) specifically sets forth in paragraphs (a) through (n) the grounds under which the Court has the authority to reverse, modify, or grant other appropriate relief from agency action. *See* Iowa Code § 17A.19(10) (2005). "The burden of demonstrating the required

prejudice and the invalidity of agency action is on the party asserting invalidity.” *Id.* at § 17A.19(8)(a).

In the present case, Petitioner did not specify which of the grounds in the statute support reversal of the Board’s decision. The claims here appear to be framed as an overall challenge to the Board’s findings of fact; namely, that there is not substantial evidence to conclude that the Union did not breach its duty of fair representation. As a result, the question to be answered is whether substantial evidence exists to affirm the Board’s determination with regard to that fact.

The Court is bound by the agency’s findings of fact so long as the findings “are supported by substantial evidence in the record as a whole.” *Meyer*, 710 N.W.2d at 218 (citations omitted). “‘Substantial evidence’ means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.” Iowa Code § 17A.19(10)(f)(1) (2005). Moreover, “[a]n agency’s decision does not lack substantial evidence because inconsistent conclusions may be drawn from the same evidence.” *IBP, Inc. v. Harpole*, 621 N.W.2d 410, 418 (Iowa 2001) (citing *Second Injury Fund v. Shank*, 516 N.W.2d 808, 812 (Iowa 1994)). “Even if ‘as fact finder, [the Court] might have found otherwise,’ [the Court] must affirm if there is enough evidence to support the finding.” *Id.* at 420 (citing *Sherman v. Pella Corp.*, 576 N.W.2d 312, 320 (Iowa 1998)). “In other words, the question on appeal is not whether the evidence supports a different finding than the finding made by the [agency], but whether the evidence ‘supports the findings actually made.’” *Meyer*, 710 N.W.2d at 218. (citations omitted).

RULING

On appeal, Petitioner argues there is not substantial evidence to support the Board's finding that Petitioner failed to establish by a preponderance of the evidence that the Union acted arbitrarily or in bad faith, thus breaching its duty of fair representation. The gravamen of Petitioner's complaint here is that the Union could've done more than it did, such as gather witness statements for Petitioner, give Petitioner a polygraph, or take into consideration Petitioner's success in her unemployment proceedings. In sum, according to Petitioner, because the Union did not do these things, the Union handled the grievance in an arbitrary fashion and thereby breached its duty of fair representation to Petitioner.

A union's duty of fair representation arises from Iowa Code § 20.17(1), which provides in relative part, "the employee organization certified as the bargaining representative shall be the exclusive representative of all public employees in the bargaining unit and shall represent all public employees fairly." Iowa Code § 20.17(1) (2005). Furthermore, "[t]o sustain a claim that a certified employee organization has committed a prohibited practice by breaching its duty of fair representation, a public employee must establish by a preponderance of the evidence action or inaction by the organization which was arbitrary, discriminatory, or in bad faith." *Id.* The statute does not define what constitutes "arbitrary" or "bad faith" actions or inactions. *See generally id.* Petitioner does not argue that the Union actions or inactions were discriminatory, so that facet is not addressed in this ruling.

The Iowa Supreme Court has discussed the definition of "arbitrary" in the fair representation context. *See Norton v. Adair County*, 441 N.W.2d 347, 358-359 (Iowa 1989). In *Norton*, a local union appealed, *inter alia*, the language of a jury instruction defining when a

union acted arbitrarily. *Id.* at 358. The instruction stated “‘arbitrarily’ referred to ‘action taken without fair, solid, and substantial cause. It refers to action which will not stand the test of reason or principle.’” *Id.* In sanctioning this definition, the Court noted that the instruction was “similar to the definition used in a federal case concerning union conduct,” which provided “a union behaves arbitrarily toward an aggrieved union member if it ignores a meritorious grievance *for no apparent reason*, or processes it with only perfunctory attention.” *Id.* (citing *Melanson v. John J. Duane Co.*, 507 F. Supp. 238, 241 (D. Mass 1980)) (emphasis in original). The Court further noted that the language of the instruction was consistent with its past definition, that “[a]rbitrary means *without rational basis*. . . . Arbitrary action has been defined as a willful and *unreasonable* action, without consideration and in disregard of the facts or circumstances of the case.” *Id.* at 358-359 (citing *Powers v. Fisher Controls, Co., Inc.*, 246 N.W.2d 279, 282 (Iowa 1976)) (emphasis in original). Likewise, the United States Supreme Court has stated “[a] union’s conduct can be classified as arbitrary only when it is irrational, when it is without a rational basis or explanation.” *Marquez v. Screen Actors Guild, Inc.*, 525 U.S. 33, 46, 119 S. Ct. 292, 300, 142 L. Ed. 2d 242 (1998) (citing *Air Line Pilots Assn., Intl. v. O’Neill*, 499 U.S. 65, 78-81, 111 S. Ct. 1127, 113 L. Ed. 2d 51 (1991)). Consequently, a union’s conduct is arbitrary when its actions or inactions are *unreasonable*.

Additionally, the United States Supreme Court has defined “bad faith” in the breach of duty of fair representation context. See *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 299, 91 S. Ct. 1909, 1924, 29 L. Ed.2d 473 (1971). The Court held that to establish a claim of bad faith, “substantial evidence of fraud, deceitful action or dishonest conduct” must be proved. *Id.* at 274, 91 S. Ct. at 1924, 29 L. Ed. 2d 473. Therefore, it can be concluded that a Union

breaches its duty of fair representation when its actions or inactions are unreasonable, or are fraudulent, deceitful, or dishonest.

Thus, the ultimate question before the Board was did Petitioner establish that the Union acted unreasonably, or fraudulently, deceitfully, or dishonestly in its decision not to arbitrate Petitioner's grievance? Here, there is no evidence in the record whatsoever that the Board's actions or inactions were fraudulent, deceitful, or dishonest. Furthermore, the Board found that the Union's decision to not to arbitrate was not unreasonable. The Board found the Union did not ignore Petitioner's grievance or process it in a perfunctory manner, or otherwise act arbitrarily. Further, it found that the Union filed and processed the grievance in a timely manner and represented Petitioner at the third step meeting. Moreover, it found that the Union considered and weighed numerous factors in reaching its decision not to arbitrate Petitioner's grievance, including the credibility of the witnesses for and against her, along with Petitioner's disciplinary record.

What's more, the Board found that the Union's failure to do more than it did, *i.e.*, help Petitioner gather witness statements, give Petitioner a polygraph examination, and to consider the Petitioner's success in the unemployment agency hearing, was not unreasonable. The U.S. Supreme Court has recognized that "[a]ny substantive examination of a union's performance . . . must be highly deferential, recognizing the wide latitude that negotiators need for the effective performance of their bargaining responsibilities." *Air Line Pilots Assn., Intl.*, 499 U.S. at 78, 111 S. Ct. 1127, 113 L. Ed. 2d 51. Furthermore, although a union may not arbitrarily ignore a meritorious grievance, an individual employee does not have an absolute right to have her grievance taken to arbitration. *See Vaca v. Sipes*, 386 U.S. 171, 191, 87 S. Ct. 903, 917 17 L.

Ed. 2d 842 (1967). Moreover, demonstrating mere errors in judgment does not sustain a claim of breach of the duty of fair representation. *See Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 571, 96 S. Ct. 1048, 1059 47 L. Ed 2d 231 (1976). Likewise, “mere negligence, even in the enforcement of a collective-bargaining agreement, would not state a claim for breach of the duty of fair representation.” *United Steelworkers of Am. v. Rawson*, 495 U.S. 362, 372-73, 110 S. Ct. 1904, 1911, 109 L. Ed. 2d 362 (1990).

First, the Board found that the Union’s failure to obtain witness statements for Petitioner or have Petitioner take a polygraph did not violate the Union’s duty of fair representation. The record shows the local union steward explained to Petitioner she needed to gather witness statements stating she did not drive through the crossing. The steward testified he reviewed one statement with Petitioner and advised her it did not contain the relevant information, rather it needed to state that Petitioner didn’t drive through the railroad crossing. While Petitioner argued she lacked the necessary knowledge and skills to obtain proper statements, the Board concluded that the Union’s failure to assist her in obtaining the statements did not rise to the level of arbitrariness, at most such a failure would be negligent, as found by the Eighth Circuit in *Taylor v. Belger Cartage Service, Inc.*, 762 F.2d 665, 668 (8th Cir. 1985). In *Taylor*, the court was presented with a similar question of whether a union breached its duty of fair representation by requiring the grievant to obtain notarized statements from other witnesses even though the grievant had no experience in getting such statements, or by failing to introduce certain witnesses and cross examine others, or by having to ‘prod’ the union into representing him. *See id.* The court concluded that even if the evidence supported employee’s contentions, it would “amount at most to a claim of negligence, which is insufficient to establish a breach of duty of

fair representation.” *Id.* The Board made the same conclusion of the polygraph exam, that union’s failure to have Petitioner take a polygraph exam at most amounted to negligence and did not rise to the level of arbitrariness. Therefore, there is substantial evidence to support the Board’s conclusion that the Union’s failure to take witness statements for Petitioner or have Petitioner take a polygraph was not unreasonable.

Secondly, the Board found that the Union’s decision not to consider Petitioner’s success in her unemployment proceedings as evidence she could win the arbitration was not unreasonable. This Court recognizes Petitioner’s argument that she did not seek to admit the unemployment proceeding’s record and outcome as evidence at arbitration, but rather argued that the outcome should have been relevant to the Union’s decision. She asserts it evidenced that the defects in her case could potentially be overcome. However, the Union’s argument not to consider the proceeding’s outcome is relevant too. Again, the Union reasoned that each proceeding had different standards of proof, and it determined based upon the evidence before it, it would not win Petitioner’s grievance in the arbitration proceeding. As stated above, the Union has wide latitude in determining what action to take on behalf of the employee it represents, and the employee is not guaranteed its grievance be taken to arbitration. *See Air Line Pilots Assn., Intl.*, 499 U.S. at 78, 111 S. Ct. 1127, 113 L. Ed. 2d 51; *Vaca*, 386 U.S. at 191, 87 S. Ct. at 917, 17 L. Ed. 2d 842.

Petitioner also cites *Norton* for the proposition that unemployment proceeding outcomes are relevant evidence and must therefore be taken into consideration by the union. This argument fails. In *Norton*, the Petitioner correctly identified our Supreme Court’s determination that the employee’s Job Service Decision was relevant to the case before it. *See Norton*, 441

N.W.2d at 357-358. However, the *Norton* case can be distinguished from the present case. In *Norton*, the Court determined that the district court had concurrent jurisdiction with the Board to hear a claim of a union's breach of duty of fair representation, based upon the federal parallel between courts and the National Labor Relations Board and the absence of language to the contrary in Iowa Code Chapter 20. *Id.* at 350-354. Moreover, one of the elements the employee was required to prove to establish her claim that the union breached its duty of fair representation was "that she was discharged from her employment without proper cause." *Id.* at 356. Thus, the Job Service's Decision would have been relevant in that instance.

However, the same does not hold true in the present case. In 1990, in response to the Court's decision in *Norton*, the legislature amended Iowa Code § 20.17(1). *See O'Hara v. State*, 642 N.W.2d 303, 308 (Iowa 2002). The amendment added language to the existing statute to include elements that an employee must establish to prove a union breached its duty of fair representation. *See id.*; Iowa Code § 20.17(1) (2005). Establishing that the employee was discharged without proper cause, as required in *Norton*, was not among the elements the legislature chose to include in its amendment of § 20.17(1). The amendment required the employee to establish by a preponderance of the evidence that union's actions were arbitrary, discriminatory, or in bad faith. *See* Iowa Code § 20.17(1) (2005). Thus, this Court cannot conclude that *Norton* required the Union to consider Petitioner's unemployment compensation decision and that its failure to do so constituted unreasonable action. Therefore, there is substantial evidence to support the Board's conclusion that the Union's failure to consider Petitioner's winning outcome in her unemployment proceeding was not arbitrary action.

It is not this Court's job to substitute its fact-finding determinations for that of the Deputy, as long as there is substantial evidence in the record before the Court, when that record is viewed as a whole, supporting the Board's findings of fact. *See* Iowa Code § 17A.19(10)(f) (2005). The record shows there is substantial evidence to support the Board's finding that Petitioner failed to establish by a preponderance of the evidence that the Union's actions were arbitrary or in bad faith, thus breaching its duty of fair representation.

JUDGMENT AND ORDER

The Petitioner's Petition for Judicial Review is therefore denied and dismissed. Court costs are assessed against the Petitioner.

It is so ORDERED.

Dated this 17th day of August, 2006.



Mary Ann Brown
JUDGE OF THE EIGHTH JUDICIAL
DISTRICT OF THE STATE OF IOWA

CERTIFICATE OF SERVICE: The undersigned certifies that a true copy of the document was served on each person named (and checked) below, including attorneys of record, or the parties where no attorney is of record, by enclosing this document in an envelope addressed to each named person at the respective addresses disclosed by the pleadings of record herein, with postage fully paid, by depositing the envelope in a United States depository or hand delivered on 8-17-06.

☒ Petitioner's Attorney: Philip Mears
☒ Respondent's Attorney: Jan V. Berry
☒ 3rd Party Attorney: Mark Hedberg
☒ Court Administration

Signed: 
Clerk / Designee